

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA**

BUILDERS ASSOCIATION OF	)	
METROPOLITAN PITTSBURGH and	)	
S. RAND WERRIN,	)	
	)	Civil Action No. 2:22-CV-00706-RJC
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF PITTSBURGH,	)	
	)	
Defendant.	)	

**MOTION FOR LEAVE TO FILE SURREPLY**

AND NOW, come Plaintiffs, Builders Association of Metropolitan Pittsburgh (“BAMP”) and S. Rand Werrin (“Dr. Werrin”, and together with BAMP, the “Plaintiffs”), by counsel, and hereby move this Court for Leave to File a Surreply to Defendant’s Reply Brief in Support of its Motion to Dismiss Plaintiffs’ First Amended Complaint for Lack of Subject Matter Jurisdiction, and aver as follows:

1. On June 10, 2024, the Court issued an Order requiring the parties to file stage one dispositive motions by August 23, 2024; to file responses by September 20, 2024; and to file replies by October 4, 2024.
2. Defendant filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction on August 23, 2024, *see* ECF No. 105, along with a Brief in support thereof. *See* ECF No. 106.
3. Thereafter, Plaintiffs filed an Unopposed Motion for an Extension of Time to file a Response in Opposition to Defendant’s Motion to Dismiss. *See* ECF No. 108.
4. This Court granted Plaintiffs’ Motion for Extension on September 13, 2024, extending Plaintiffs’ deadline to file its Reply in Opposition to Defendant’s Motion to Dismiss to October 10, 2024. *See* ECF No. 111.

5. On October 8, 2024, Plaintiffs filed a Second Uncontested Motion for Extension of Time to File a Response to Defendant's Motion to Dismiss. *See* ECF No. 108.

6. That same day, this Court granted Plaintiffs' Second Uncontested Motion for Extension of Time to File a Response to Defendant's Motion to Dismiss and directed the Plaintiffs to file a response by October 24, 2024, with Defendant's reply due by November 7, 2024. *See id.*

7. In accordance with the above-described Order, Plaintiffs filed their Brief in Opposition to Defendant's Motion to Dismiss on October 24, 2024. *See* ECF No. 112.

8. Defendant subsequently filed a Reply Brief in Further Support of their Motion to Dismiss on November 7, 2024.

9. The above-described orders do not address whether Plaintiffs may file a surreply in response to Defendant's Reply Brief.

10. The decision "whether to grant 'permission for leave to file a sur-reply is a matter committed to the District Court's sound discretion.'" *Gentry v. Sikorsky Aircraft Corp.*, No. CV 18-1326, 2018 WL 6329147, at \*2 (E.D. Pa. Dec. 4, 2018) (quoting *Levey v. Brownstone Inv. Grp., LLC*, 590 F. App'x 132, 137 (3d Cir. 2014)).

11. Courts in the Third Circuit will generally grant leave to file a surreply brief "where the proposed brief responds to new evidence, facts, or arguments raised for the first time in the moving party's reply brief." *EMC Corp. v. Pure Storage, Inc.*, 154 F. Supp. 3d 81, 103 (D. Del. 2016); *see also Hess Fence & Supply Co. v. U.S. Fid. & Guar. Co.*, No. CIVA 4:04CV2648, 2006 WL 3325445, at \*2 (M.D. Pa. Oct. 12, 2006) (granting leave to file surreply to give the defendant "an opportunity to respond to new arguments" raised in the plaintiff's reply brief).

12. In its Reply Brief Defendant makes bold accusations that certain entities are not members of BAMP and attempts to frame BAMP's members as "supporters" not otherwise able to establish standing. *See* ECF No. 113, at p. 3.

13. Plaintiffs, in accordance with the Standing Order and Procedures regarding Civil Motion Practice of this Honorable Court, hereby request leave to file a short, three (3) page, Surreply in Further Support of their Opposition to Defendant's Motion to Dismiss in order to respond to Defendant's newly raised arguments. A copy of Plaintiffs' proposed Surreply in Further Support of its Opposition to Defendant's Motion to Dismiss is attached hereto as **Exhibit A**.

14. Plaintiffs' counsel has consulted with counsel for Defendant and was advised that Defendant opposes the relief requested in the motion.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant Plaintiffs leave to file a Surreply in Further Support of Plaintiffs' Opposition to Defendant's Motion to Dismiss Plaintiff's First Amended Complaint for Lack of Subject Matter Jurisdiction.

Respectfully submitted,

LEECH TISHMAN FUSCALDO & LAMPL, LLC

Dated: November 15, 2024

By: /s/ Richard J. Cromer

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the within **MOTION FOR LEAVE TO FILE SURREPLY** was filed electronically on November 15, 2024. Notice of this filing will be sent to all parties via the Court's electronic case filing system and constitutes service of this filing under Rule 5(b)(2)(E) of the Federal Rules of Civil Procedure. Parties may access this filing through the Court's ECF system.

Respectfully submitted,

LEECH TISHMAN FUSCALDO & LAMPL, LLC

Dated: November 15, 2024

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